IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

RFA.No. 107 of 2007()

AGAINST THE ORDER DATED 30/09/2005 IN IA.1864/2004 IN OS.544/2001 of II ADDL.SUB COURT,ERNAKULAM
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APPELLANT/2ND DEFENDANT

K.A.ALOSHIOUS, SON OF LATE ANTONY,
KOVATHUPARAMBIL HOUSE, OPPOSITE SUVARNA ARTS,
KALAVATHU ROAD, PALARIVATTOM, EDAPPALLY SOUTHE
VILLAGE, KANAYANNOOR TALUK.

BY ADV. SRI.M.CHATHUKUTTY NAMBIAR

RESPONDENTS: PLAINTIFF/DEFENDANTS1,3,4 & 5
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1. K.D.GEORGE, SON OF LATE DEVASSY,
KOVATHUPARAMBIL HOUSE,LPS ROAD,
EDAPPALLY SOUTH VILLAGE,
KANAYANNOOR TALUK.

2. K.A.SEBASTIAN, S/O LATE ANTONY,
KOVATTUPARAMBIL HOUSE, CHANEPARAMBU,
HARITHA LANE,VENNALA, EDAPPALLY SOUTH VILLAGE,
KANAYANOOR TALUK.

3. K.A.FRANCIS, SON OF LATE ANTONY,
KOVATTUPARAMBIL HOUSE, MENON BAZAR,
AZHEEKODE,THRISSUR DISTRICT.

4. XAVIER, SON OF OUSEPH,
VELIYIL HOUSE, PALLATH ROAD,
THAMMANAM, PALARIVATTOM,
POONITHURA VILLAGE, KANAYANNOOR TALUK.

5. BIJU, SON OF XAVIER, -DO- -DO-

6. PRIYA, D/O.XAVIER, -DO- -DO-

BY ADV. SRI.P.K.RAVISANKAR

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 13/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

R.F.A.NO.107 OF 2007

Dated this the 13th day of September, 2007

JUDGMENT

Raman, J.

Second defendant in the suit for partition is the appellant. Preliminary decree for partition was passed allotting equal shares to the parties. Based on the Commission report and plan, final decree was passed. The objection of the appellant is that even though the plaintiff has a common pathway through the northern side, the Commissioner allowed to put separate pathway through the plaint schedule property, which is causing serious prejudice to the interest of the defendant. Admittedly, plot A is allotted to the defendant, who have a road frontage on the western portion, which is a public road. Plaintiff in the case was allotted plot B to which there is no access through the northern portion of the property. According to the defendant, there is already a public pathway on the northern side, through which the plaintiff could have access to his property. But according to the court below, no satisfactory evidence was adduced regarding the existence of such a public pathway, so as to enable the plaintiff to use the same as

of right. At any rate, the present pathway earmarked is only parallel to the existing pathway, whether it is a public pathway or a private pathway. The area occupied by the pathway is already included in the share allotted to the plaintiff and no additional extent is allotted in favour of the plaintiff because of the pathway. Considering plot A, which is a better plot, the court below has directed the defendant herein to pay owelty. We find that in the absence of any concrete evidence in this case, no prejudice is seen to have been caused to the defendant, as contended. The court below has passed the final decree accepting the plan and report allotting the plots in an equitable manner. We do not find any error of law or fact to interfere with the final judgment and decree of the court below.

Appeal is accordingly dismissed.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.